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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,364	08/20/2003	Scott Comeaux	9060/1(a)	6400

23381 7590 03/17/2004

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EXAMINER

CHEN, JOSE V

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/644,364	Applicant(s) COMEAX, SCOTT	
	Examiner José V. Chen	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

It is noted that applicant must update the information in the specification regarding any related applications, such as now abandoned.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4-6, 8-12, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilotti in view of Rabe. The patent to Bilotti teaches structure substantially as claimed including flexible top surface, side skirt area, securement means, the only difference being that the member does not include a coating to enhance friction to prevent slippage of the cover on the surface to be covered or slippage of articles placed thereon. However, the patent to Rabe teaches the use of providing a antislip coating to provide a friction enhancing means to prevent slippage of the cover on the supported surface and of articles placed thereon. It would have been

obvious and well within the level of one having ordinary skill in the art to modify the structure of Bilotti to include a coating on the surface of the structure to provide a further securement means since such structures are conventional alternative structures used for the same intended purpose, thereby providing structure as claimed. The use of different shaped members for different shaped surfaces are well known features for covers. Further, the use of conventional fasteners, such as snaps, buttons, Velcro, and other conventional closures used for the same intended purpose would have been obvious and well within the level of ordinary skill in the art and the use of heat sealing plastic seams is a well known practice in the art applicant is given judicial notice of such. It is repeated, that the claims do not claim a combination of a surgical tray and stand and that a structure is entitled to all of its uses. There is no structure in Bilotti to prevent the covering from performing on any supported structure.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bilotti in view of Rabe as applied to the claims above, and further in view of Bonnett. The patent to Bilotti teaches structure substantially as claimed as discussed above including a surface, the only difference being that the material is not paper. However, the patent to Bonnett teaches the use of paper as a material for a covering to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Bilotti in view of Rabe to include a different material as taught by Bonnett since such structures are conventional alternative structures used in the same intended purpose thereby providing structure as claimed.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bilotti in view of Rabe as applied to the claims above, and further in view of Marshall. The patent to Bilotti teaches structure substantially as claimed as discussed above including cover structure the only difference being that the structure is not sterilized. However, the patent to Marshall teaches the use of sterile covers. It would have been obvious and well within the level of one having ordinary skill in the art to modify the structure of Bilotti to include sterilized cover structure, as taught by Marshall, since such structures are conventional alternative structures used in the same intended purpose, thereby providing structure as claimed.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bilotti in view of Rabe as applied to the claims above, and further in view of Putnam. The patent to Bilotti in view of Rabe teaches structure substantially as claimed as discussed above including a top surface with inherent padding, the only difference being that the padding is not positioned on the top surface. However, the patent to Putnam (fig.8) teaches the use of providing padding on a top surface to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Bilotti to include padding provided on a top side, as taught by Putnam since such structures are conventional alternative positions providing the same intended purpose of providing a cushioning, thereby providing structure as claimed.

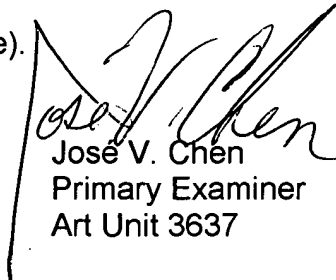
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Danielson, Geisen et al, Berman, Dare et al, Ericson, Nelson et al, Gordon teach structure similar to applicant's.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (703) 308-3229. The examiner can normally be reached on m-f, m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703)308-2168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


José V. Chen
Primary Examiner
Art Unit 3637

Chen/jvc
03-10-04